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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

COLBERT, ELLA

ART UNIT

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3696

MAIL DATE

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12/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/593,786	Applicant(s) DARIUS ET AL.	
	Examiner Ella Colbert	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-6 are pending. No claims have been amended in this communication filed 09/09/09 entered as Response After Non-Final Action and Request for Extension of Time.
2. The Drawing Objections have been overcome by Applicants' convincing remarks and are hereby withdrawn.
3. The Objections to the Specification have been overcome by Applicants' convincing remarks and are hereby withdrawn.
4. The 35 USC 112, First Paragraph Rejection still remains as set forth here below.
5. The 35 USC 112, Second Paragraph Rejection still remains as set forth here below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites "simultaneously exposing generic mortgage profile information ...". There is nothing in Applicants' Specification relating to "simultaneously exposing generic mortgage profile information" and a specific mortgage

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lender profile being instantiated with a set of unique lender characteristics for use ... in completing the mortgage transaction. Applicants' Specification recites "exposing generic mortgage profile information". There is nothing in the Specification or that is seen in the drawing Fig. 3 where "simultaneously exposing generic mortgage profile information is found. Where is the "simultaneously exposing " found in either place referenced. Also, there is not any "specific mortgage lender with a set of unique characteristics for use ... in completing the mortgage transaction found in paragraph 0023 and Fig. 3 or Fig. 5. Para. 0023 mentions 'generic mortgage lender profiles" but leaves the remainder to one's imagination.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites "exposing to the broker the at least one generic mortgage lender profile simultaneously exposing ...". This recitation is unclear and indefinite as to what Applicants' mean by "exposing to the broker the at least one generic mortgage lender profile simultaneously exposing ...". Infact, as written the recitation does not make sense. Do Applicants' mean "exposing to the broker at least one generic mortgage lender profile and simultaneously exposing ..."? Claim 1 further recites "Applying a given generic mortgage lender profile to given data ... who meet criteria specified in the given data, responsive to entry by the broker of the given

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data". This claim limitation is vague and indefinite since there has not been any data given prior to this step. There has been "generic mortgage profile information" in the first step. It cannot be determined where the "given data" is coming from. Do Applicants' mean the "given data" is coming from the "generic profile information"?

Claim 3 recites "eligibility matrix" and the Specification recites "eligibility matrices". It cannot be determined what Applicants' "eligibility matrix" is supposed to be since there is not any definition found in Applicants' Specification. The terms are very broad, varied and indefinite since they can mean many different things. The terms "eligibility matrix" and "eligibility matrices" was searched and there was not any definition found.

"Patentee can act as his own lexicographer to specifically define terms of a claim contrary to their ordinary meaning does not apply if the written description does not so clearly define the disputed claim term(s) so as to put a reasonable competitor, or one reasonably skilled in the art, on notice that patentee intended to so redefine that term". *Process Control Corp. v. HydReclaim Corp. (CAFC) 52 USPQ2d 1029 (9/7/1999)*.

Claims 2-6 are also rejected since they depend from a rejected base claim.

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...". *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by (US 6,233,566) Levine et al, hereafter Levine.

Claim 1. Levine discloses, A method operative on a web server to facilitate a web-based information exchange between a broker and a set of wholesale lenders, comprising: exposing to the broker a-set-of at least one generic mortgage lender profile over said web-based information exchange, the at least one generic mortgage lender profile simultaneously exposing generic mortgage profile information for a plurality of different specific wholesale lenders (col. 3, lines 7-49); applying a given generic mortgage lender profile to data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data (col. 3, line 50-col. 4, line 32); and exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics for use by the broker in completing a mortgage transaction over said web-based information exchange, responsive to selection by the broker of one of the specific wholesale lenders (col. 8, lines 18-65, col. 9, lines 21-52, and col. 10, line 54-col. 12, line 32).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,233,566) Levine et al, hereafter Levine in view of (US 2004/0002915) McDonald et al, hereafter McDonald.

Claim 2. Levine failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes a rate sheet. McDonald discloses, The method as described in Claim 1 wherein the set of unique lender characteristics includes a rate sheet (page 5, col. 1 [0099] and page 7, col. 2 [0160]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald in Levine because such an incorporation would allow Levine to get the current rates from the broker/lender over the Internet or over the telephone.

Claim 3. Levine failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes an eligibility matrix. McDonald discloses, method as described in Claim 1 wherein the set of unique lender characteristics includes an eligibility matrix (page 6, col. 1 [0114], [0115], [0124], and [0125]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald in Levine because such an incorporation would allow Levine to know whether the broker/lender has a license to be a broker.

Claim 4. Levine and McDonald failed to disclose, The method as described in Claim 1 wherein the set of unique lender characteristics includes a lock sheet. Lock sheets are old and well-known in the art of mortgages and brokering. A broker lock sheet contains a lock date and lock period when the mortgage or loan is locked in at a certain

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percentage rate.

Claim 5. Levine failed to disclose, The method as described in Claim 1 further including the step of displaying to the broker mortgage rates and prices. McDonald discloses, The method as described in Claim 1 further including the step of displaying to the broker mortgage rates and prices (page 7, col. 2 [0166]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of McDonald into Levine because such an incorporation would allow Levine to know if the loan is to be a “No Point, NoFee” and a calculation of applicable credits if any.

Claim 6. Levine discloses, The method as described in Claim 1 further including the step of having the broker lock a loan online (col. 15, lines 53-57).

Response to Arguments

Applicant's arguments filed 09/09/09 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: The 35 USC 112, First Paragraph Rejections for claims 1-6. Response: The Examiner disagrees with the Applicants' reference to para. 0023 and drawing figures 3 and 5 as disclosing the required claim limitations. Supra.

Issue no. 2: Applicants' Argue: The 35 USC 112, Second Paragraph Rejections for claims 1-6. Response: The Examiner disagrees that one would know what an “eligibility matrix” or eligibility matrices” were supposed to be in the claim limitation since a definition when search could not be found even in the Specification at para. 0026.

Issue no. 3: Applicants' argue: Levine nowhere discloses communication between brokers and wholesale lenders but discusses communications between a borrower and a lender or broker while relevant to the loan origination process, these are completely different communications than the information exchange between a broker and wholesale lenders recited in claim 1 has been considered but is not persuasive.

Response: There is nothing in claim 1 that would lead a person to consider this the loan origination phase. Also, it is unclear how the communication would differ from the information exchange between a broker and wholesale lenders than the communication between a borrower and a lender or broker. A broker is defined as a State-licensed person who, for a fee or commission represents property owners in real-estate transactions. Some brokers act on behalf of borrowers in arranging mortgage financing and negotiating the terms of the sale. Mortgage brokers contact lenders to get the borrower the best deal possible on a mortgage. Then often once the transaction is completed the loan is sold in a group of loans to different lenders which can be wholesale lenders.

McDonald is used to reject the claim limitations that were not interpreted as being disclosed by Levine.

Since no amendments to the claims have been made the rejection(s) still stand.

Although the PTO must give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach. *In re Cortright* 49 USPQ2d 1464, 1467 (Fed. Cir. 1999). "Having established that this knowledge was in the art, the Examiner could then properly rely, as put forth by the

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solicitor, on a conclusion of obviousness ‘from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The court has consistently taken the tack that claims yet unpatented are to be given the broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims, the thought being to reduce the possibility that, after the patent is granted, the claims may be interpreted as giving broader coverage than is justified. *In re Prater*, 162 USPQ 541 (CCPA 1969).

“An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...”. *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Trammell James can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

December 17, 2009